IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2271 of 2005
With
FIRST APPEAL No. 2272 of 2005
To
FIRST APPEAL No. 2283 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
BHIKHABHAI RANCHHODBHAI PATEL & 1 - Defendant(s)

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Appearance :
MR SATYAM CHHAYA, AGP for Appellant(s) : 1,
MR TRILOK J PATEL for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 03/05/2007

ORAL JUDGMENT

1. The short facts of the case appear to be that

for the acquisition of various lands situated at Village Navi Jethardi, Taluka Kanjan the proposal was moved for Narmada Canal Project. The notification under Section 4 of the Land acquisition Act (hereinafter referred to as “the Act”) was published on 20.1.1985 in the Government Gazette. Thereafter, the notification under Section 6 of the Act was published on 1.10.1985. The procedure under Section 9 of the Act was followed and on 2.7.1987 the award was passed by the Special Acquisition Officer (hereinafter referred to as “LAO”) and he awarded the compensation at Rs.2.25 per sq. mtrs., to the owner of the land.

2. The claimants of the land were not satisfied with the compensation and hence, they demanded more compensation by making application in the year 1988 and claimed Rs.11.25 per sq. mtrs., as additional compensation. The matter thereafter came to be referred to the Reference Court for adjudication being Reference No.626 of 1991 to No.638 of 1991. It appears that pending the Reference before the Reference Court, the

Claimants moved an application for amendment by enhancing the claim of compensation from Rs.11.25 to Rs.25/- per sq. mtrs. The Reference Court after adjudication on the basis of the yield method recorded the finding that the valuation of the land would be Rs.1,90,000/- per hectre and, therefore, the Reference Court found that the claimant would be entitled to the compensation of Rs.19/- per sq. mtrs. The Reference Court also found that because of the severance of the land on account of the acquisition for canal, the claimant would also be entitled to 1/6th of the market value and additionally awarded the benefits as per the Scheme of the Act for the increase in the price at the rate of 12% p.a. as per Section 23 (1-A) of the Act and the solatium at the rate of 30% as per Section 23(2) of the Act and also the interest at the rate of 9% for the first year from the date of taking over the possession and the interest at the rate of 15% for the subsequent year until the amount is deposited in the Court or realised, whichever is earlier, by passing the judgement and award dated 30th

September, 2003 and it is under these circumstances, the present appeals by the State before this Court.

3. It may be recorded that the State in the present proceedings of the First Appeal did submit an application to produce the additional evidence being Civil Application No.2659 of 2007 in First Appeal No.2271 of 2005 to Civil Application No.2671 of 2007 in First Appeal No.2283 of 2005, since the State was desirous to produce the map and the extract of true copy of the Village Form Nos.7 and 12 and the Soil Report, Index etc. This Court as per the order dated 9.4.2007 in the said Civil Applications permitted production of the documents with the observations and clarifications that the question of evidentiary value of such document shall remain open and shall be finalized as and when the First Appeals are finally heard. Similarly, the respondent – claimants have also preferred application to produce additional evidence as that of the order of the Reference Court in respect to the acquisition of the land situated at Village Juni Jethardi and its confirmation by this Court

in the proceedings of the First Appeal being Civil Application No.6404 of 2007 in First Appeal No.2271 of 2005 to Civil Application No.6416 of 2007 in First Appeal No.2283 of 2005. This Court, vide order dated 2.5.2007, has also permitted the production of such document, without concluding on the aspects of evidentiary value of such documents and had observed that the extent of evidentiary value of such document shall be finalized at the time when the First Appeals are finally heard. Therefore, the aforesaid documents may be required to be considered to the extent found proper by this Court for the purpose of deciding the present First Appeals.

4. Heard Mr.Chhaya, learned AGP for the appellant, Mr.Trilok J. Patel, learned Counsel for the respondent Claimants. Considered the paper-book prepared by the claimants comprising of the affidavit, cross-examination and other documents being copies of part of the record of the Reference Court, which have been supplied by Mr.Patel for the claimant.

5. The first aspects, which may be required to be considered, is the method to be applied for determination of the market value of the land under acquisition. There are various modes for assessing market value of the land on the date of the notification under Section 4 of the Act. At this stage, it would be relevant to extract certain observations of the Apex Court in case of **"Special Land Acquisition Officer, Davangere vs. P. Veerabhadarappa", reported in AIR 1984 SC, 774** and more particularly the observations made at para 7, which reads as under:-

> "7. The function of the Court in awarding compensation under the Act is to ascertain the market value for the land at the date of notification under Section 4 (1) and the methods of valuation may be : (1) Opinion of experts: (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages: and (3) A number of years'

purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. (emphasis supplied)."

6. Therefore, it will have to be examined as to whether any method is available for assessing the market value of the land and if the answer is `yes', the Court would avoid the application of method of capitalization of yield base, more particularly in the cases of assessing the value of the agricultural land. The map produced by the State in the proceedings of the appeal being Civil Application No.2659 of 2007 and allied matters with the consent of the learned Counsel appearing for both the sides is considered for the purpose of examining the location of the

land under acquisition, which are situated at Navi Jethardi. The said map shows that Village Navi Jethardi is on the northern side adjoining to Juni Jethardi and on its eastern boundary touches to Village Dhavat, Juni Jethardi. The distance between the Village Navi Jethardi and Dhavat as mentioned in the map is 2.5 kms. The another Reference Court of Baroda District at the level of Assistant Judge had an occasion to consider the matter for awarding compensation in Land Reference Case No.643 of 1991 to 652 of 1991 for the acquisition of the land at Village Dhavat. In the said case the said Reference Court as per the judgement and award dated 12.12.1996 by relying upon the earlier decision by this Court in the proceedings of F.A. No.2209 of 1995 and allied matters, ultimately found that the market price of the lands under acquisition are situated at Village Dhavat at Rs.6/- per sq. mtrs. and, therefore, awarded compensation accordingly.

7. It deserves to be recorded that in the said case before the Reference Court of Assistant Judge at Baroda, the notification under Section 4 of the

Act was published on 27.12.1984. Therefore, it can be said that as per the decision of the Reference Court of the Assistant Judge for the land situated at Village Dhavat Rs.6/- per sq. mtrs., was assessed as the market value in which the notification under Section 4 of the Act was published on 27.12.1984. Xerox copies of the said judgement of the Reference Court is produced by the appellant State in the record of Civil Application No.2659 of 2007 and allied matters.

8. It deserves to be recorded that in the decision of the said Reference Court, reliance is placed upon the judgement of this Court dated 16.12.1995 in First Appeal No.2209 of 1995. In the said matter this Court ultimately found that the market value of the land in question is at Rs.6/- per sq. mtrs., or Rs.60,000/- per sq. hectres. It deserves to be recorded that after the application of the yield method, for the assessment of the market value for the land situated at Village Dhavat this Court had found Rs.6/- per sq. mtrs., as proper market price of the land under acquisition.

9. In case of the acquisition of the land for Village Juni Jethardi, the Reference Court of

Civil Judge (S.D.), which has also passed the impugned judgement and award in the present appeal, after applying the yield method found that the income of the Claimant could be stated as Rs.9,000/- per vigha and applying the multiplier of ten, the Court found that the value of the land per vigha could be Rs.90,000/- per sq. hectres and thereafter the Reference Court ultimately assessed the valuation on the basis that the Claimants in the present case have proved the valuation only up to Rs.1,32,000/- per hectres and, therefore, are entitled to the compensation of Rs.13.20 per sq. mtrs., of the land under acquisition situated at Village Juni Jethardi. The aforesaid judgement of the Reference Court in Land Reference Case No.849 of 1991 and allied matters is produced by the Claimants with the record of Civil Application No.6404 of 2007 and allied matters. It deserves to be recorded that the Reference Court in the said judgement did consider the aspect that for the land situated at Village Dhavat, the compensation is awarded at Rs.6/- per sq. mtrs. However, the said evidence was discarded on the ground that since the person concerned had no

knowledge for the distance between the Village Dhavat and Juni Jethardi and as there was no evidence to show that the lands of both the villages are same, the Reference Court in the said judgement did not accept the said contention. The said judgement of the Reference Court was carried before this Court in the proceedings of First Appeal Nos.369 o 2005 to 374 of 2005 and this Court, in its order dated 21.4.2005 while confirming the said judgement of the Reference Court also found that no evidence recording the exact distance between the Village Dhavat and Juni Jethardi was produced, nor any evidence was produced to show that the lands of both the Villages were the same and, therefore, the Reference Court had come to the conclusion that the claimants are entitled to the additional compensation of Rs.11.20 per sq. mtrs., total of Rs.13.20 per sq. mtrs., and, therefore, ultimately rejected the appeals. A copy of the said order of this Court dated 21.4.2005 is produced by the claimants/respondents with the papers of Civil Applications No.6404 of 2007 and others.

10.Mr.Patel, learned Counsel for the

respondents/claimants, during the course of the hearing, also declared before the Court that the claimants are restricting their claim at Rs.13/- per sq. mtrs., in view of the confirmation of the judgement of the Reference Court by this Court in the proceedings of First Appeal Nos.369 to 374 of 2005 for the lands under acquisition of Village Juni Jethardi.

11. Therefore, under these circumstances, it appears that for the lands of Village Dhavat, Single Bench of this Court has confirmed the market value of the land at Rs.6/- per sq. mtrs., after taking into consideration the yield method. As against the same, the Division Bench of this Court in respect to the land situated at Village Juni Jethardi has confirmed the valuation at Rs.13.20 per sq. mtrs., based on the yield method, but the same was on peculiar facts and circumstances that there was no evidence produced on record for the distance between the Village Juni Jethardi and Dhavat and in absence of any evidence to show that both the lands were the same.

12. It has now come on record in view of the above referred map produced with Civil Applications

No.2659 of 2007 and allied matters that the distance between village Dhavat and Navi Jethardi is about 2.5 kms and, therefore, the land of Village Dhavat can be said as in the adjoining or nearby area of the land under acquisition of Village Navi Jethardi. Further, the State has also produced the Soil Testing Report of the land at Village Dhavat and of the land at Village Navi Jethardi (land under acquisition) at Annexure " V" (Page 126 and 127). The learned Counsel for the respondents/claimants raised objections that as mentioned in the testing report, the same cannot be used for any legal purpose and, therefore, this Court may not consider the said report. In my view, it is a report issued by the Gujarat State Fertilizers and Chemicals Limited for the purpose of soil testing and utilization of the fertilizer. The soil testing report shows that the land of village Navi Jethardi as per the said report requires more addition of gypsum in the land and, therefore, even if the aspects of lower quality of the land at Village Navi Jethardi as per the test report is not given much weightage, it cannot be said that the fertility of the land at Village Dhavat is, in any case,

lesser than the land at Village Navi Jethardi. Therefore, it can be said that the land situated at Village Navi Jethardi is more or less the same on the aspects of fertility with the land situated at Dhavat. Therefore, in view of the aforesaid specific two evidences on record namely; one for the distance between the land at Village Dhavat and Navi Jethardi and the evidence for fertility of the land to accept the contentions raised on behalf of the respondents by Mr.Patel that the valuation of the land as confirmed by this Court for Village Juni Jethardi at Rs.13.20 be accepted as the valuation of the land under acquisition situated at Village Navi Jethardi, cannot be accepted fully.

13. As such, even if the valuation of the land situated at Village Dhavat is considered at Rs.6/- per sq. mtrs., keeping in view the fixation of the assessment of the valuation after applying yield method and the aspects of outright rejecting the comparison of the land of Village Dhavat with Village Juni Jethardi in the above referred Reference Case and the confirmation thereof by this Court, it appears that it would be just and proper to assess the valuation of the

land by taking mean of both the assessment made by this Court in the above referred two decisions; one for village Dhavat and another for village Juni Jethardi. Such mean would be Rs.9.50 as the valuation of the land.

14. I am inclined to take such view because in the judgement of this Court dated 16.12.1995 in First Appeal No.2209/1995 this Court considered the aspect of net income per vigha at Rs.4,000/- in respect of the land situated at Village Dhavat and further also considered the demand made on behalf of the Claimants for the valuation of the land at Rs.6/- per sq. mtrs., whereas in the case of the assessment of the valuation for the land at village Juni Jethardi, the Court outright rejected the contention for comparison of the land at Village Dhavat and Village Juni Jethardi. Further it is also an admitted position that no documentary evidence is produced on record even in the present case by the claimants to show the exact yield by production of the bills for the sale of the crop, etc. If the extract of Village Forms No.7 and 12 produced by the claimants, compared with the extract of Village Forms No.7 and 12 produced on behalf of the State with the

papers of Civil Application No.2659 of 2007, there are material differences in the cultivation shown and the major difference is the cultivation shown as that of sugar cane, which were even not stated in the Reference Application made by the concerned claimants. Further, the claimants initially prayed for a lower amount of compensation before the Land Acquisition Officer at Rs.28,000/- to Rs.90,000/- per acre, whereas before the Special Land Acquisition Officer while demanding more compensation initially it was prayed for Rs.11.25 per sq. mtrs., and after the matters were referred to the Reference Court, the prayer for compensation was enhanced for Rs.25/- per sq. mtrs. Therefore, keeping in view of the aforesaid facts and circumstances, I find that it would be just and proper to take mean of the valuation assessed for the land at Village Dhavat at the rate of Rs.6/- and for the valuation assessed for Village Juni Jethardi at Rs.13.20 per sq. mtrs., and to consider the average price i.e. Rs.9.50 per sq. mtrs., as the market value of the land under acquisition situated at Village Navi Jethardi, which is nearby both the lands of Village Juni Jethardi and Dhavat.

15. The awarding of the compensation by the Reference Court additionally by 1/6th based on the severance of the land appears to be improper inasmuch as there was no evidence on record to show that the claimants had incurred any expense on account of separation of the lands into two parts. Mr.Patel, learned Counsel for the respondents/claimants contended that on account of the canal passing in between the land of the petitioner the land is divided into two parts and, therefore, severance, and, therefore, it would result into reduction of the valuation of the land and also additional expenses for the agricultural operations. Had it been a case where the acquisition is to result into division of the land into two parts on account of any other project, it may stand on a different footing, but in the present case, it is on account of the construction of canal, which is to add the water facility to all agricultural lands, including the lands of the claimants in the nearby area. It appears that passing of the canal adjacent to the agricultural land itself adds to not only additional irrigation facility, but would add to further facility in the

agricultural activities, including by improvement in the water retention capacity in the nearby land. Further, all such aspects are incidentally to be considered while deciding the quantum of compensation to be awarded by finalizing the market value. Even in respect to the land situated at village Juni Jethardi or for the land at Village Dhavat, such additional compensation was not awarded. Therefore, under all the aforesaid circumstances, I find that the Reference Court has committed error in awarding additional 1/6th amount under the head of severance of the land and the said part of the judgement and award of the Reference Court deserves to be quashed and set aside.

16. In view of the aforesaid observations and discussions, it is hereby held that market value of the land under acquisition is assessed at Rs.9.50 per sq. mtrs., out of which, as the Special Land Acquisition Officer has paid the compensation at Rs.2.25 per sq. mtrs., the claimants would be entitled to the additional compensation at Rs.7.25 per sq. mtrs. Hence, ordered accordingly.

17. The other statutory benefits as ordered by the

Reference Court on the aspects of increase at the rate of 12% as per Section 23(1-A) of the Act and the solatium at the rate of 30% as per Section 23(2) of the Act and the interest at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent year are in accordance with the Scheme and, therefore, the same deserves to be confirmed, except to the extent that on account of the reduction of the principal amount of compensation from Rs.16.75 to Rs.7.25, such statutory benefits shall proportionately get reduced. Hence, ordered accordingly.

18. In the result, the appeals are partly allowed. Decree accordingly.

4.5.2007 **(Jayant Patel, J.)**

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